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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/207,634
	Filing Date	12/09/98
	First Named Inventor	Joseph J. Berke
	Group Art Unit	3618
	Examiner Name	Bridget Avery
	Attorney Docket Number	1374-098
Total Number of Pages in This Submission	4	

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Firm or Individual name	Alex Rhodes, Reg. No. 26,797
Signature	
Date	July 16, 2001

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PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

*Request for
Reconsideration*

#11

*N.E.
7-24-01
VW*

Applicant: Joseph J. Berke et al.

Atty Docket No. 1374-098

Serial No. 09/207,634

Group Art Unit: 3618

Filed: Dec. 9, 1998

Examiner: Bridget Avery

For: **BAG CARRIER**

Response Under 37 CFR
1.116 Expedited Procedure
Examining Group 3618

Response to Paper No. 9

Assistant Commissioner for Patents
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Sir:

This is a response to the Examiner's 's final office action, having a shortened statutory date for a response set to expire on July 16, 2001.

Response

Reconsideration of the subject application is requested. It is believed that the application should be passed for allowance because of the following reasons. Applicants believe they are entitled to rights to the claimed inventions and desire to avoid the delay and expense of an appeal.

The test for combining references is not whether references can be combined, but rather whether there is a suggestion or motivation in the prior art for combining the references. Moreover, a claimed invention must be viewed as a whole rather than in view

of its parts. In Interconnect Planning v. Feil, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985) the Court of Appeals for the Federal Circuit said it is error to reconstruct a claimed invention from the prior art using an inventor's claim as a "blueprint". In In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1446, (Fed. Cir. 1992) the Federal Circuit reversed an Examiner's rejection of claims under 35 USC 103, stating "there must be some teaching, reason, suggestion, or motivation found 'in the prior art' or 'in the prior art references' to make a combination to render an invention obvious within the meaning of 35 USC §103 (1988)." See also In re Mayne, 104 F.3d 1339, 41 USPQ2d 1451 (Fed. Cir. 1997) and In re Jones, 958 F.2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992) and MPEP 706.02(j).

Faraj US 5,697,624 discloses a single wheel (col. 3, lines 18-19) cart for suspending a grocery bag by a handle on a hook. There is no suggestion or motivation for providing a means for clamping the grocery bag to Faraj's cart. The Examiner's attention is directed to Fig. 1 and lines 44-55 of Faraj wherein it is stated:

"A plurality of U-shaped or J-shaped hooks 26 are located on the middle portion of the support member 12. Each of the hooks 26 is positioned for receiving a handle or handles of a first container 28, such as a bag and supporting the container 28."

Moreover, Faraj teaches away from clamping a bag to the cart. On lines 23-26 of col. 3, Faraj teaches supporting a bag without handles on a bracket. In col. 3, lines 32-35, Faraj claims that because his cart is a one wheel cart, it can be carried on buses while loaded with groceries, is easy to manufacture and is affordable. Thus, to modify Faraj in the proposed manner would defeat the objects of the invention.

White US 5,621,950 is directed to an entirely different type of art (class 24 vs. class

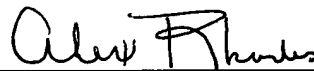
280). White discloses a small spring loaded paper clip for gripping and holding large quantities of paper without slipping or shifting. There is no suggestion or motivation in White for combining White with Faraj. Nor is there a suggestion or motivation in White for carrying an open bag on a wheeled cart.

None of the applied references teach the claimed inventions in independent claims 5, 14 and 28 comprising the non-obvious combinations of a wheeled cart and a carrier having a pair of elongated jaws for transporting a bag. Since claims 6-10, 12-13 and 20-22 depend from claims 5 and 14, for the same reasons as claims 5 and 14, they are also non-obvious from the references. Claim 13 is further non-obvious from the references by the positive limitation of a means for clamping the jaws comprising a pair of bolts and thumb nuts.

Claim 22 is further non-obvious by the positive limitation of a metal strip with outward extending tabs for forming a gripping surface. Claim 24 is further non-obvious by the positive limitation of at least one pair of wheels. Claim 11 has been allowed.

For the above reasons, it is respectfully requested that this application be passed for allowance. Although no further changes are believed necessary, should the Examiner believe otherwise, a telephone call would be appreciated.

Respectfully submitted,



Alex Rhodes, Reg. No. 26,797
Attorney for Applicants
30100 Telegraph Road, Suite 460
Bingham Farms, MI 48025
(248) 646-4400

Dated: July 16, 2001